

STATE OF MICHIGAN
COURT OF APPEALS

MUMFORD PARK IMPROVEMENT
ASSOCIATION, INC.,

UNPUBLISHED
June 12, 1998

Plaintiff-Appellant,

v

No. 200184
Court of Claims
LC No. 96-016384-CM

MICHIGAN ATTORNEY GENERAL and
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendants-Appellees.

Before: McDonald, P.J., and Sawyer and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court orders granting defendants summary disposition pursuant to MCR 2.116(C)(8) for plaintiff's failure to state a claim on which relief could be granted and granting defendants sanctions pursuant to MCR 2.114(D) and (E) for plaintiff's filing of a frivolous claim. We affirm.

Plaintiff is the homeowners association for a subdivision in Hamburg Township in Livingston County. Plaintiff owns waterfront property on Portage Lake that is used to provide lake access to homeowners in the subdivision who do not own lakefront property. The Michigan Department of Environmental Quality (MDEQ) determined plaintiff was operating a marina on its property, as defined in MCL 324.30101(f); MSA 13A.30101(f), and requested plaintiff obtain a permit as required by MCL 324.30102(c); MSA 13A.30102(c). When plaintiff failed to obtain a permit, the MDEQ filed a declaratory judgment action in Livingston Circuit Court, seeking a declaration that plaintiff's maintenance of lakefront lots containing two docks for use by subdivision residents constituted operation of a marina. Plaintiff then sued defendants in the Court of Claims, alleging that the MDEQ's application of MCL 324.30101 *et seq.*; MSA 13A.30101 *et seq.* to its property constituted a regulatory taking. Plaintiff made a motion in the Court of Claims for the court to join its regulatory taking action with defendants' circuit court action pursuant to MCL 600.6421; MSA 27A.6421. However, the Court of Claims denied plaintiff's motion, finding no similarity existed between the issues

in the two cases. The Court of

Claims subsequently granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and granted defendant's motion for sanctions based on its conclusion that plaintiff's lawsuit was frivolous.

Plaintiff first argues the Court of Claims erred when it denied plaintiff's motion to join its regulatory taking action with defendants' circuit court declaratory judgment action. We disagree. We review the Court of Claims' denial of plaintiff's motion for an abuse of discretion. See *Gardner v Stodgel*, 175 Mich App 241, 250; 437 NW2d 276 (1989). MCL 600.6421; MSA 27A.6421 permits the joinder of cases in the Court of Claims "with cases arising out of the same transaction or series of transactions which are pending in any of the various trial courts of the state" and provides that when such cases are joined, the case in the Court of Claims is to be determined by the judge while the case with which it is joined may be determined by a jury. Actions may be consolidated or joined for trial when they involve a "substantial and controlling common question of law or fact." MCR 2.505.

Plaintiff's regulatory taking action and defendants' declaratory relief action do not involve substantial and controlling common issues of fact or law. Plaintiff's regulatory taking action would focus on whether the MDEQ's designation of plaintiff's property as a marina denies plaintiff economically viable use of its land.¹ *K & K Construction, Inc v Dep't of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531. Defendants' action depends on whether the docking and boating activities on plaintiff's property qualified it as a marina under the statute. The Court of Claims did not abuse its discretion in denying plaintiff's joinder request.

Plaintiff next contends the Court of Claims erred in granting defendants summary disposition based on its finding that plaintiff's regulatory taking claim was not ripe. We disagree. We review the grant of summary disposition de novo. *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 139; 565 NW2d 383 (1997). A regulatory taking claim is ripe when the landowner has received a final administrative decision regarding the application of the regulation to the property. *Electro-Tech v H F Campbell Co*, 433 Mich 57, 79; 445 NW2d 61 (1989); *Oceco Land Co v Dep't of Natural Resources*, 216 Mich App 310, 314; 548 NW2d 702 (1996). Plaintiff filed its regulatory taking action before the MDEQ's declaratory action in Livingston Circuit Court had been resolved; therefore, there was no final administrative determination that the property would be designated a marina. Accordingly, plaintiff's claim was not ripe.

Plaintiff contends its regulatory taking claim was ripe upon the MDEQ's initial determination that it was operating a marina because local zoning ordinances preclude the operation of a marina on the property. We disagree. The mere existence of a conflict between how plaintiff wishes to use the property and the uses authorized by local zoning ordinances does not make plaintiff's claim ripe. Plaintiff made no showing that it sought any relief from local zoning authorities such as a land use variance. Accordingly, it has failed to establish a final decision has been made regarding the permitted uses of the property. *Paragon Properties Co v City of Novi*, 452 Mich 568, 579-580; 550 NW2d 772 (1996), citing *Williamson Co Regional Planning Comm v Hamilton Bank of Johnson City*, 473 US 172, 193; 105 S Ct 3108; 87 L Ed 2d 126 (1985).

Finally, plaintiff argues the Court of Claims clearly erred by granting defendants sanctions pursuant to MCR 2.114. We disagree. We are not left with a definite and firm conviction that the Court of Claims erred in imposing sanctions. *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

Defendants ask this Court to impose further sanctions on plaintiff pursuant to MCR 7.216(C) for filing a vexatious appeal. We do not believe plaintiff's joinder argument completely lacked merit; therefore, we refuse to impose vexatious appeal sanctions.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

¹ Plaintiff does not claim the regulation fails to substantially advance a legitimate state interest. See *K & K Construction, Inc v Dep't of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531.